

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 98-0740
GROSS INCOME TAX
FOR TAX PERIOD: 1994-1996

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Issues

1. Gross Income Tax: Imposition of Gross Income Tax

Authority: IC 6-2.1-3-24.5, IC 6-8.5-5-1 (b), IC 6-2.1-2-2, 26 USCA 1361 (b), 26 USCA 1504 (a).

The taxpayer protests the imposition of the gross income tax.

Statement of Facts

The taxpayer is an Indiana corporation whose operations include metered fuel sales, transport fuel and heating oil sales, repair work and other general sales such as wipers and fountain drinks. After an audit, the taxpayer was assessed gross income tax, interest and penalty. The taxpayer protested the assessment. Further facts will be provided as necessary.

1. Gross Income Tax: Imposition of Gross Income Tax

Discussion

During the audit period, the taxpayer filed as a small business corporation. An Indiana corporation that qualifies as a small business corporation for federal purposes also qualifies as a small business corporation in Indiana. IC 6-2.1-3-24.5 9 (a). To qualify as a small business corporation, the corporation must have only one class of stock and the shareholders must be

individuals. 26 USCA 1361 (b). The taxpayer corporation met these requirements. Any Indiana corporation qualified to file as a small business corporation is exempt from the Indiana gross income tax. IC 6-2.1-3-24.5 9 (b).

26 USCA 1361 (b) states that a corporation does not qualify for small business corporation status if it is a member of an affiliated group as determined under 26 USCA 1504. The audit revealed that the taxpayer corporation owned one hundred per cent (100%) of two other corporations. Pursuant to 26 USCA 1504 (a), a corporation's ownership of at least eighty per cent (80%) of the value and the voting power of another corporation's stock constitutes affiliation unless the subsidiary has no gross income. In this case, the subsidiaries had gross income. Since the corporate taxpayer appeared to be part of an affiliated group, the taxpayer corporation did not qualify as a small business corporation and did not qualify for the small business corporation exemption from gross income tax. Therefore, the auditor assessed gross income tax, interest and penalty against the taxpayer.

Tax assessments are prima facie evidence that the tax is owed and taxpayers bear the burden of proving that a tax assessment is incorrect. IC 6-8.1-5-1 (b).

After the telephone hearing, the taxpayer submitted stock certificates showing that an individual owned the controlling interest in the stock of the two "affiliate" corporations. The corporations' records in the Secretary of State's office also indicate that the corporations are owned by an individual. Pursuant to 26 USCA 1504, an "affiliated group" is a group of corporations that meet certain requirements. There is no way to be an "affiliated group" if the corporations are owned by individuals rather than affiliated corporations. The taxpayer is unable to submit copies of amended federal 1120 returns because the years in question are out of statute. The taxpayer corporation met the statutory requirements to be a small business corporation and receive the exemption from the gross income tax.

Finding

The taxpayer's protest is sustained.